THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.20598 OF 2005

DATE:20.09.2005

Between:

Pothula China Subba Rao,

S/o.Narayana Murthy, aged 58 years,

Occ:Agriculture, R/o.Indukurupeta Village,

Devipatnam Mandal, East Godavari District

and others

…… Petitioners

And

The Additional Agent to Government,

Rampachodavaram, East Godavari District

and others

…… Respondents

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 20598 of 2005

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ORDER:

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The 3rd respondent filed L.T.R.P.No.64 of 2004 before the 2nd respondent under the provisions of A.P. (Schedule Areas) Land Transfer Regulation 1 of 1959 as amended by Land Transfer Regulation 1 of 1970, against the petitioners, in respect of certain lands. The 2nd respondent dismissed the L.T.R.P., through order, dated 21.07.2004. Aggrieved thereby, the 3rd respondent filed C.M.A.No.93 of 2005 before the 1st respondent. The grievance of the

petitioners is that though there was delay in preferring the appeal and though an application for condonation of delay was filed, the 1st respondent numbered the appeal obviously by condoning the delay without notice to the petitioners. They challenge the action of the 1st respondent in this regard.

Heard the learned counsel for the petitioners and the learned Government Pleader for Social Welfare.

It is true that the 3rd respondent preferred an appeal before the 1st respondent against the order, dated 21.07.2004, in L.T.R.P.No.64 of 2004, with a delay of three months twenty-five days. In fact, he filed an application under Section 5 of the Limitation Act (for short 'the Act') to condone the delay. The petitioners were not issued any notice in the application for condonation of delay. On the other hand, they were served with notice in C.M.A.No.93 of 2005, obviously disclosing that the delay was condoned without notice to the petitioners.

Once an application was filed by the 3rd respondent under Section 5 of the Limitation Act, the 1st respondent ought to have issued notice to the petitioners. With the expiry of the period of limitation for preferring an appeal, a valid right accrues to the petitioners. It is a different thing, that the delay was not so enormous or that the 1st respondent was satisfied, for condonation of delay. Such a step could have been taken only after issuing notice to the petitioners. Instead of requiring the 1st respondent to issue notice to the petitioners in the condone delay petition, the present notice issued to them in the C.M.A., can be treated as the one in the application for condonation of delay.

For the foregoing reasons, the writ petition is disposed of directing that;

a. The notice issued to the petitioners in C.M.A.No.93 of 2005 shall be treated as the one in the application filed by the 3rd respondent under Section 5 of the Act.

b. The 1st respondent shall pass appropriate orders as to whether the delay of three months twenty-five days deserves to be condoned.

c. In case, the 1st respondent condones the delay, the C.M.A. shall be continued with the present number. On the other hand, if he rejects the application, the C.M.A. shall stand dismissed. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

20th SEPTEMBER, 2005.

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